

YALKUT & ISRAEL, ESQS.
(Arlen S. Yalkut) (AY1522)
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
WILLIAM FRIMPONG,

Plaintiff,

- against -

07 CV 7375(JGK)
ECF CASE

**1199 SEIU UNITED HEALTHCARE
WORKERS EAST,**

Defendant.

-----X

AFFIRMATION OF ARLEN S. YALKUT

Arlen S. Yalkut, an attorney duly admitted to the courts of the State of New York and in the Southern District of New York, affirms, under the penalties of perjury, as follows:

1. I am one of the attorneys for the plaintiff, WILLIAM FRIMPONG, herein and am familiar with the facts of this case. I am making this affirmation in opposition to the Defendant's motion seeking to dismiss the Complaint and/or for summary judgment

2. The plaintiff, WILLIAM FRIMPONG, first consulted with my firm on August 2, 2006. Thereafter, Mr. Frimpong executed an authorization permitting the

release of his employment record with Bronx-Lebanon Hospital to my firm. (See annexed a copy of the authorization.) Thereafter, the employer provided a copy of the record including various Employee Performance Appraisal forms. (See annexed hereto the four most recent forms provided by the employer.) No evaluation forms for the calendar years 2002 and 2003 were provided and Mr. Frimpong is unaware of their existence and he was never asked to sign for such forms.

3. The last four evaluations list Mr. Frimpong's ratings as average or above average. In addition, Mr. Frimpong vehemently denies that he received a prior infraction of a similar nature. My review of the employment record does not reveal any incident of a physical altercation or fight with a fellow employee.

4. As noted in Mr. Frimpong's own affidavit he has been a member in good standing in the Defendant union continuously since 1989. He is still a dues paying member, but apparently not a member who is receiving the benefits of such union membership.

5. As an ongoing member he is entitled, at the very least, to be properly informed as to the benefits to which he is and was entitled.. An essential element of this entitlement requires or should require that he also receive proper and informed advice from union representatives when he makes inquiries as to those benefits. The Defendant union clearly failed to advise Mr. Frimpong as to how and where he could apply for training and job placement.

6. It is respectfully urged that the Defendant union had and has an ongoing

obligation to provide such information. The affidavit of SUZANNE METZGER to the effect that Mr. Frimpong never applied for or availed himself of the Funds should be given no weight since the Defendant union failed to direct him to the appropriate office when he made inquiry at the union's office.

7. The damages sustained by the plaintiff, WILLIAM FRIMPONG, flow from the Defendant union's failure to provide proper advice and services and that it is matter which should not be time barred. His work record clearly indicated that he could have been employable in the housekeeping department of another hospital if only the defendant union had directed him to such available position. The defendant certainly saw fit to continue to accept Mr. Frimpong's union dues.

8. Summary judgment is a drastic remedy and should not be imposed lightly. Where there are contended issues of fact, as in this case, summary judgment is not applicable.

8. For all of the reason set forth above, the Defendant's motion to dismiss and/or for summary judgment should be denied.

WHEREFORE, It is respectfully urged that the Defendant's motion be denied in all respects.

Affirmed November 12, 2007


ARLEN S. YALKUT (AY-1522)

YALKUT & ISRAEL

Attorneys At Law

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**ARLEN S. YALKUT
ROY S. ISRAEL**

**NICOLE M. HARLEY,
(Of Counsel)**

September 22, 2006

**WHITE PLAINS OFFICE
175 MAIN STREET SUITE 410
WHITE PLAINS, NEW YORK 10601
(914) 686-9393**

Mr. Jason J. Nhambiu
Bronx-Lebanon Hospital
Manager, Labor Relations
1780 Grand Concourse, 2nd Floor
Bronx, New York, 10457

Re: Employment Records Authorization

Dear Mr. Nhambiu:

YOU ARE HEREBY AUTHORIZED to furnish to Yalkut & Israel, Esqs. Of 865B Walton Avenue, Bronx, New York 10451 or bearer complete and entire copies of William Frimpong employment record for the years 1989 and to the present date.

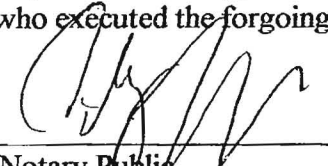
This pertains your employee William Frimpong social security number [REDACTED]


WILLIAM FRIMPONG

Dated: Bronx, New York

State of New York, County of Bronx

On the 22nd day of September 2006, before me personally came and appeared WILLIAM FRIMPONG known to me to be the individual describe and who executed the forgoing instrument, and who duly acknowledged to me that he executed same.


Notary Public

**CURITY JEFFREY
Notary Public, State of New York
No. 01JE6141752
Qualified in Bronx County
Commission Expires Feb. 27, 2010**

Annual Review

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EMPLOYEE PERFORMANCE APPRAISAL

S.S.# 080-74-4507

EMPLOYEE NAME: <u>Frimpong William</u>	TITLE: <u>House Keeping Worker</u>
DATE OF HIRE: <u>2/6/1989</u>	DATE STARTED CURRENT POSITION:
DEPARTMENT: <u>Environmental Services</u>	APPRAISER: <u>EARL ELWOTT</u>
APPRAISAL PERIOD FROM: <u>01/01/01</u>	DATE OF APPRAISAL: <u>09/30/01</u>

GENERAL INSTRUCTIONS

1. Fill in all the information requested above.
2. List the key duties performed by the employee from the position description. Rate the employee and cite specific examples of work performance to clarify your rating. A copy of the employee's current position description should be attached.
3. Summarize the employee's overall performance listing strengths exhibited over the past year and improvements or goals for the coming year.
4. Comment on the employee's overall performance for the past year with your overall rating. Allow the employee to add his/her comments on the appraisal.

KEY DUTIES	A	B	C	D	E	COMMENTS
1. Ensure that all patients, visitors and guest, as well as co-worker receive personalized, prompt attention and are treated with receptiveness, dignity and respect, no matter how limited the contact.		X				
2. Is effective in maintaining and assuring the quality and appropriateness of services provided to all patient, visitors, guests and co-workers.		X				
3. Attendance and punctuality (start of work and return to work from breaks and lunch) is maintained at the average of other employees in the department.		X				
4. QUALITY: The ability to produce work free from error; also the ability to detect error. This category appraises the employees' performance in meeting standards of accuracy, thoroughness, and neatness. Maintains routinely assigned area in such a manner to ensure that a pre-established Quality Assurance efficiency ratings are achieved and consistently maintained. (85%=Medical Surgical)		X				

<p>5. QUANTITY: The ability to produce the amount of work required. The time taken to complete a job should also be taken into consideration. This category appraises work output without consideration to quality.</p>		X				
<p>6. JOB KNOWLEDGE/SKILLS: A clear understanding of those work factors which are pertinent to the employees' performance: acquired through training, experience or education. Employee has satisfactory knowledge of chemical, supply and equipment used in performing duties as well knowledge in Universal Precautions, Infection Control, Fire & Safety, Hazard Communication Program, OSHA, Employee Right To Know, Patient Bill of Rights, and Regulated Medical Waste. (Reference Bi-annual Training Records and Department In-Service Documentation). The possession of technical knowledge. This category appraises how well the employee applies these skills to the acquired job knowledge.</p>		X				